

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

JERRY E. SANDERS  
Plaintiff

V.

NO. 2:95CV126-B-B

JAMES A. SANDERS, JR.  
Defendant

**MEMORANDUM OPINION**

This cause comes before the court upon the plaintiff's motion for partial summary judgment and the defendant's motion to dismiss. The court has duly considered the parties' memoranda and exhibits and is ready to rule.<sup>1</sup>

**FACTS**

The parties are brothers, and the only children of James, Sr. and Mary Sanders, both of whom are deceased. The plaintiff resides in Kentucky; the defendant in Tennessee. The plaintiff asserts diversity jurisdiction under 28 U.S.C. § 1332.

This action involves two parcels of land. The first parcel consists of two adjacent lots with a house in which the defendant resides, located in Memphis, Tennessee (hereinafter "the Tennessee property"). The second parcel consists of 24.2 acres of

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<sup>1</sup> The plaintiff filed a motion for partial summary judgment, with supporting memoranda and affidavits. The defendant failed to respond directly, despite an extension of time in which to do so, but rather filed a motion to dismiss, without any memoranda or exhibits.

undeveloped land located in DeSoto County, Mississippi (hereinafter "the Mississippi property").<sup>2</sup>

The Tennessee property was conveyed to James, Sr. and Mary Sanders by warranty deed dated July 27, 1948. The Mississippi property was originally sold to the defendant as evidenced by a warranty deed dated October 8, 1971. However, by warranty deed dated July 11, 1972, the defendant conveyed the Mississippi property to his father, James Sanders, Sr.

The parties' father died on September 4, 1980; the parties' mother on March 4, 1995. Both died intestate. The plaintiff requests that the court adjudicate each party to be the holder of an undivided 1/2 interest in the properties as tenants in common. The plaintiff further seeks to have the properties sold by public auction through a private auction company.

## **LAW**

### **A. Jurisdiction Over the Tennessee Property**

The Magistrate Judge assigned to this case has raised the question as to whether this court has jurisdiction over the Tennessee property. In briefing the issue, the plaintiff conceded that "[a] Mississippi or a Tennessee state court does not have jurisdiction over the partition of property outside of the state."

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<sup>2</sup> The Mississippi property consists of two adjacent parcels of land. The warranty deed describes the two parcels as being 13.81 acres and 10.39 acres. However, the plaintiff's real estate broker who appraised the property for auction purposes described the parcels as each being 12.1 acres in size.

Nevertheless, the plaintiff objects to the Magistrate Judge's recommendation that the plaintiff's claims relating to the Tennessee property be dismissed for lack of jurisdiction.

The law is well-settled in Mississippi that Mississippi courts do not have jurisdiction over suits to determine title to property located outside the boundaries of the state. Tideway Oil Programs, Inc. v. Serio, 431 So. 2d 454, 457 (Miss. 1983); Zorick v. Jones, 193 So. 2d 420, 421 (Miss. 1966). A federal court sitting in diversity has no greater jurisdiction than the courts of the forum state. Anderson v. Moorer, 372 F.2d 747, 751 (5th Cir. 1967); Rodriquez v. Bar-S Food Co., 539 F. Supp. 710, 713 (D. Col. 1982). Since the warranty deed to the Tennessee property lists James, Sr. and Mary Sanders as the owners, and since the plaintiff is asking that both parties be adjudicated as owning an undivided 1/2 interest in the property, this is clearly an action affecting title. As such, this court has no jurisdiction to entertain the plaintiff's claims regarding the Tennessee property. See also Iselin v. Meng, 269 F.2d 345, 347 (5th Cir. 1959), cert. denied, 361 U.S. 913, 4 L. Ed. 2d 183 (1959) (district court should have dismissed for lack of jurisdiction after determining that the land involved was situated in another state).

Although the plaintiff fails to cite to it, the court has considered the case of Trust Co. Bank v. United States Gypsum Co., 950 F.2d 1144 (5th Cir. 1992). Trust Co. Bank involved a suit

filed in the Southern District of Mississippi to recover expenses incurred in removing asbestos from a building located in Georgia. On appeal, the Fifth Circuit noted the general rule that local actions must be tried in the state in which the property is located, but since Mississippi had rejected the local action doctrine, the Fifth Circuit held that the District Court could have exercised jurisdiction over the action. Id. at 1148-1150. Trust Co. Bank is distinguishable from the present case in that Trust Co. Bank involved an in personam products liability action to recover damages only incidentally related to real property, as opposed to an in rem action to try title. The Fifth Circuit noted that the outcome would be different if title were at issue by stating: "[The dispute] does not involve intricate title questions...which, by virtue of their intimate connection with another state, would compel the trial court to disavow its jurisdiction and send the case to a more qualified forum." Id. at 1150. However, even if the holding in Trust Co. Bank permitted this court to entertain jurisdiction over the Tennessee property, the court would decline to exercise jurisdiction in accordance with the forum non conveniens principles set forth by the Mississippi Supreme Court in Strickland v. Humble Oil & Ref. Co. 11 So. 2d 820 (Miss. 1943).

#### **B. Jurisdiction Over the Mississippi Property**

In response to the plaintiff's motion for partial summary judgment, the defendant filed a motion to dismiss on the grounds

that the property in question is not worth in excess of \$50,000.00, so as to satisfy the jurisdictional amount set forth in 28 U.S.C. § 1332. Since the court is declining to exercise jurisdiction over the Tennessee property, we look only to the value of the Mississippi property to determine if the minimum amount in controversy is met. The plaintiff has filed an affidavit from a licensed real estate broker and auctioneer stating that the Mississippi property would bring between \$45,000.00 and \$55,000.00 at public auction. The plaintiff has further filed his own affidavit in which he states that he has previously received an offer in the amount of \$50,000.00 on the Mississippi property. Neither an estimate by an auctioneer of what a piece of property would bring at an auction, nor a statement by an owner of what he had been "offered" for his property are admissible evidence of a property's market value. Even if the offer were considered here, it still does not satisfy the minimum jurisdictional amount of "in excess of \$50,000.00," and the auctioneer's estimate, although not admissible, expresses a median estimated sale price of only \$50,000.00. Accordingly, the court finds that it lacks jurisdiction over the Mississippi property.

#### **CONCLUSION**

For the foregoing reasons, the court finds that it has no jurisdiction over the claims relating to either the Tennessee or the Mississippi property. Therefore the defendant's motion to

dismiss should be granted. Based on the foregoing, the court need not address the plaintiff's motion for partial summary judgment.

An order will issue accordingly.

THIS, the \_\_\_\_\_ day of May, 1996.

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NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE